

Office of the
Legislative Fiscal Analyst

FY 2004 Budget Recommendations

Joint Appropriations Subcommittee for
Capital Facilities and Administrative Services

Department of Administrative Services
Division of Administrative Rules

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1.0 Summary: Division of Administrative Rules

The Division of Administrative Rules establishes procedures for administrative rulemaking, records administrative rules, and makes administrative rules available to the public. As a member of the Department of Administrative Services, the Division "provides agencies assistance in rulemaking; administers [the Utah Administrative Rulemaking Act]; and requires state agencies to comply with filing, publication and hearing procedures" (Utah Code 63-46a-10). To accomplish these mandates, the Division provides training to agency rulewriters and administrators, performs one-on-one consultations, publishes a periodic newsletter and distributes the *Rulewriting Manual for Utah*. The Division also provides regular notices to agencies of rules due for five-year review, rules about to expire, or rules about to lapse.

	Analyst FY 2004 Base	Analyst FY 2004 Changes	Analyst FY 2004 Total
Financing			
General Fund	261,200	(600)	260,600
Total	<u>\$261,200</u>	<u>(\$600)</u>	<u>\$260,600</u>
Programs			
DAR Administration	246,700	13,900	260,600
Rules Publishing	14,500	(14,500)	
Total	<u>\$261,200</u>	<u>(\$600)</u>	<u>\$260,600</u>
FTE/Other			
Total FTE	4		4

2.0 Issues: Division of Administrative Rules

The division has two primary publications - *The Utah State Bulletin* and the *Utah Administrative Code*. The *Utah State Bulletin* is state government's means of notifying the public of rules being proposed by state agencies as well as the basic tool for soliciting public comment. The *Bulletin*, issued on the first and fifteenth each month, is Utah's version of the *Federal Register*. In addition to containing proposed rules, the Bulletin includes emergency rules, notices of five-year reviews, effective notices, other public notices from state agencies, indexes of effective rules and executive orders. Publication will switch to electronic format only beginning in April of 2003.

The *Utah Administrative Code* is the compilation of effective rules with which state government, local entities and citizens are required to comply. The *Code* is Utah's version of the *Code of Federal Regulations*. In addition to effective rules, the printed Code contains research aids such as indexes, tables that correlate statutes and rules, case annotations, and history notes. The *Code* is available in print on CD or electronically over the internet.

2.1 Elimination of Paper Publication

Since 1997 electronic access to rules publications increased dramatically while subscriptions to paper publications declined. Given tight budget constraints across the state, the Analyst believes that the Publications program can be eliminated with no loss of access to users. Savings from the elimination are recommended for appropriation to other the Rules Administration program.

2.2 Fiscal Impact of Rules

Administrative rules have the impact of law – which means that they can have a fiscal impact on State government or on citizens and businesses. Legislators have expressed concern that the rule making process lacks a formal fiscal note process. There is concern that State Agencies may enact rules without fully considering costs to the State or citizens. To ensure fiscal oversight, the Division and the Analyst enacted a program to provide better rule writing and additional oversight.

3.0 Programs: Division of Administrative Rules

3.1 DAR Administration

	2002	2003	2004	Est/Analyst
Financing	Actual	Estimated	Analyst	Difference
General Fund	255,000	248,700	260,600	11,900
Total	\$255,000	\$248,700	\$260,600	\$11,900
Expenditures				
Personal Services	232,900	225,800	239,700	13,900
In-State Travel	200			
Out of State Travel	1,200	2,300	2,300	
Current Expense	5,500	5,500	5,500	
DP Current Expense	15,200	15,100	13,100	(2,000)
Total	\$255,000	\$248,700	\$260,600	\$11,900
FTE/Other				
Total FTE	4	4	4	
*General and school funds as revised by Supplemental Bills I-V, 2002 General and Special Sessions. Other funds as estimated by agency				

Utah Code 63-46a-10(5) gives this budget nonlapsing authority.

Fiscal Impact of Rules

The Administrative Rules Review Committee seeks to ensure that fiscal impacts arising from rulemaking authority are properly addressed. Impacts may be the result of new rules or rise from rule amendments.

In response to Legislative Intent, the Division of Administrative Rules maintains standards for agency submission of proposed rules. All impacts must be fully explained, including those proposed rules that have no fiscal impact. In addition, the Office of the Legislative Fiscal Analyst reviews fiscal notes contained in the *Utah Digest* (a summary of the *Bulletin*) every month.

Across the board cuts made to the Division in FY 2003 created serious difficulties in maintaining the program. Given the fact that the Division provides statewide leadership in online access it seems clear that paper publication can be eliminated in favor of electronic publication. This will create a savings for the Division to fund continued operations.

Recommendation

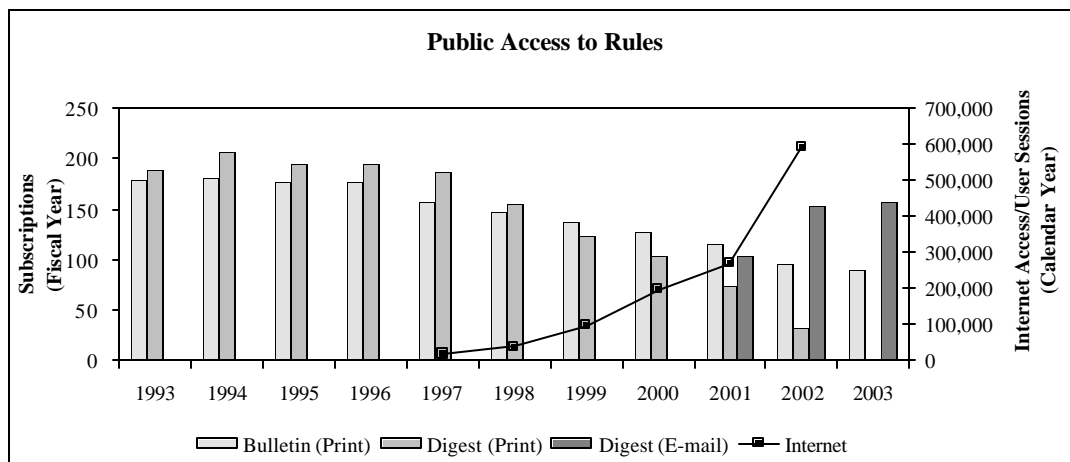
The Analyst recommends an ongoing General Fund transfer of \$12,500 from the Rules Publishing Program to the Rules Administration Program.

3.2 Rules Publication

	2002 Actual	2003 Estimated	2004 Analyst	Est/Analyst Difference
Financing				
General Fund	16,700	12,500		(12,500)
Beginning Nonlapsing	13,700	5,300		(5,300)
Closing Nonlapsing	(5,300)			
Total	<u>\$25,100</u>	<u>\$17,800</u>	<u>\$0</u>	<u>(\$17,800)</u>
Expenditures				
Current Expense	19,300	15,100		(15,100)
DP Current Expense	5,800	2,700		(2,700)
Total	<u>\$25,100</u>	<u>\$17,800</u>	<u>\$0</u>	<u>(\$17,800)</u>
FTE/Other				

*General and school funds as revised by Supplemental Bills I-V, 2002 General and Special Sessions. Other funds as estimated by agency

Increased electronic access alleviates the need for hard-copy publications. For the last five years paper subscriptions have dropped as electronic access skyrocketed. Given the decline in print subscriptions the Analyst believes that the time has come to convert to a purely electronic delivery system for rules publication.



Statute (UCA 63-46a-10 (h) &(i)) requires the division to “print, or contract to print, all rulemaking publications the division determines necessary to implement this chapter; (and) distribute without charge the bulletin and administrative code to state-designated repositories, the Administrative Rules Review Committee, the Office of Legislative Research and General Counsel, and the two houses of the Legislature.”

The Division of Administrative Rules operates a user-friendly internet site that allows anyone to read, download or comment on proposed rules. The Analyst reported last year that the Division's use of technology enhances government access for citizens and adds value without requiring additional staff. With a pressing need to free up additional funds, the Analyst believes that use of technology can provide even further savings.

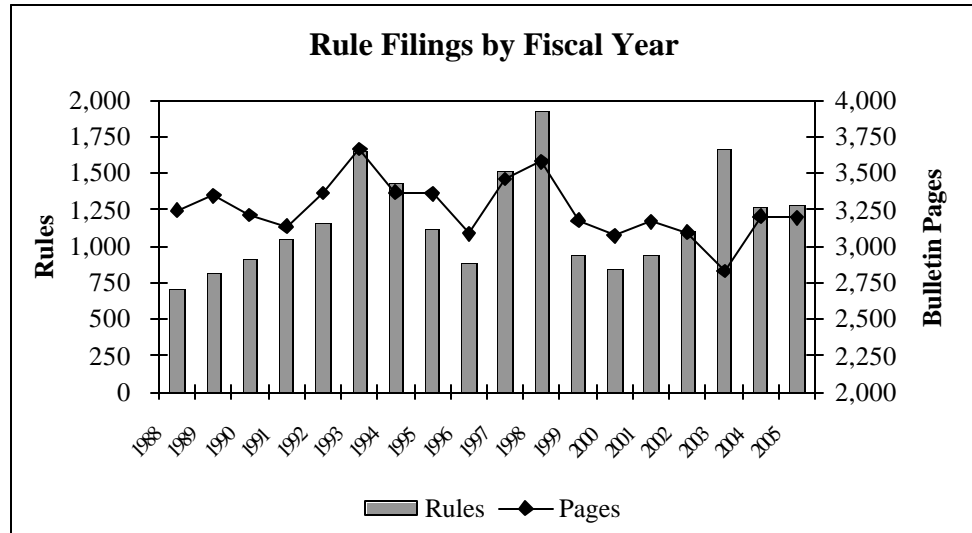
Publication of rules is needed to ensure public access to government. However, publication no longer is limited to paper and ink products. With broad electronic access through local schools and libraries, every citizen has free access to state publications, including Administrative Rules. Removing General Fund subsidies for rule publication shifts costs to users. Printed copies of the *Digest*, *Bulletin* and *Utah Administrative Code* will still be provided to those willing to pay publishing costs.

Recommendation

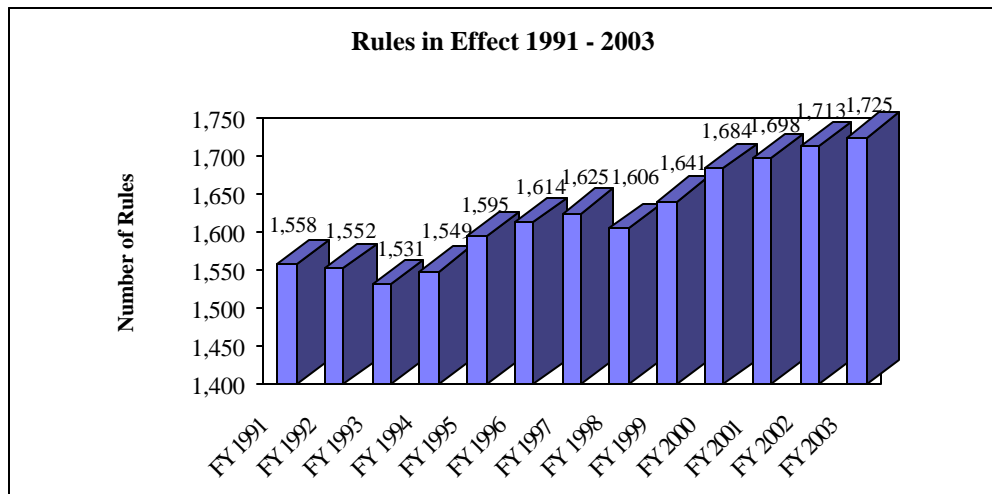
The Analyst recommends an ongoing General Fund transfer of \$12,500 from the Rules Publishing Program to the Rules Administration Program.

3.3 Performance Measures

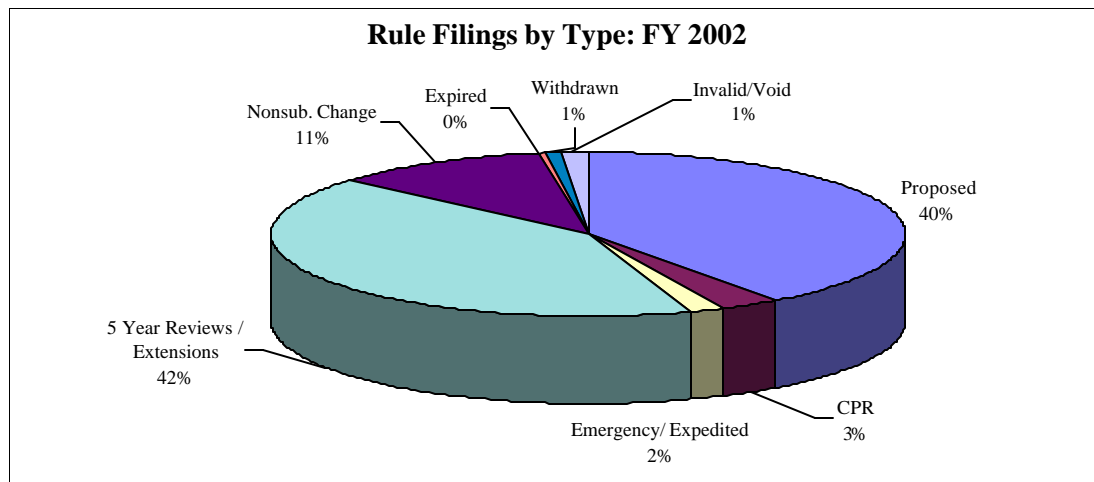
The Division of Administrative Rules counts numbers of rules filed, records the number of rules in effect and reports the type of rules modified or proposed each year. The following charts depict historical trends relating to Administrative Rules. Projections for 2003 to 2005 are based on historical trends.



Annual rule filings have more than doubled since 1988, but pages printed in the Bulletin have declined. There seems to be some correlation between rules filed and pages printed, but the relationship is weak. Other factors affecting number of pages include complexity of rules, number of rules up for five-year review and the length of fiscal commentary attached to each rule.



From 1991 through 2003 Utah maintained an average of 1,614 effective rules. In 1996 the number of rules in effect was exactly 1614. Annual growth in the number of effective rules averaged less than one percent since 1991. Cumulative growth in effective rules over the same period is less than ten percent.



The bulk of rule filings are rule proposals – almost all of which are amendments to existing rules. Of 443 proposed rules, only 49 were new rule proposals. More than forty-three percent of the 1,109 total rule filings in FY 2002 were amendments or changes in proposed rules.

4.0 Additional Information: Division of Administrative Rules

	2000	2001	2002	2003	2004
Financing	Actual	Actual	Actual	Estimated*	Analyst
General Fund	258,800	267,400	271,700	261,200	260,600
Transfers		93,000			
Beginning Nonlapsing	47,000	30,800	13,700	5,300	
Closing Nonlapsing	(30,800)	(13,700)	(5,300)		
Total	\$275,000	\$377,500	\$280,100	\$266,500	\$260,600
Programs					
DAR Administration	253,500	353,600	255,000	248,700	260,600
Rules Publishing	21,500	23,900	25,100	17,800	
Total	\$275,000	\$377,500	\$280,100	\$266,500	\$260,600
Expenditures					
Personal Services	227,400	227,800	232,900	225,800	239,700
In-State Travel			200		
Out of State Travel	2,600	1,800	1,200	2,300	2,300
Current Expense	30,800	33,400	24,800	20,600	5,500
DP Current Expense	14,200	114,500	21,000	17,800	13,100
Total	\$275,000	\$377,500	\$280,100	\$266,500	\$260,600
FTE/Other					
Total FTE	5	4	4	4	4

*General and school funds as revised by Supplemental Bills I-V, 2002 General and Special Sessions. Other funds as estimated by agency.